IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO. 2126 OF 2007

1. Deepak M. Thakkar
2. Girish Ashok Maudikar
3. Suresh Gouri Shankar Gupta .... Applicants

versus

1. Union of India
2. The State of Maharashtra .... Respondents.

Shri Amin Solkar for the petitioners.
Shri P.D. Gharat Spl. P.P. CBI for Respondent no.1.
Shri Y.M. Nakhwa APP for Respondent no.2.

CORAM; A.P. DESHPANDE, J.
DATED; 20TH NOVEMBER, 2007

P.C.;

1. The present applicants are co-accused in a case registered with CBI as R.C.No.2/04 for offences under sections 420, 467, 468 of IPC read with sections 3 and 7 of the Essential Commodities Act. The charge sheet came to be filed against one Abdul Karim Telgi and others in the Court of Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai against 14 persons. The Addl.C.M.M. has taken cognizance. The prosecution moved an application under section 324 of Cr.P.C. praying for committal of the case to the Court of Sessions. The trial court allowed the application moved by the prosecution under section 324

of Cr.P.C.and committed the case to the Court of Sessions. The present applicants are taking exception to the order passed by the trial court on the application moved by the prosecution under section 324 of Cr.P.C. and the consequential order of committal. Perusal of the application moved by the prosecution under section 324 of Cr.P.C. reveals the fact that the main accused Abdul Karim Telgi has been earlier convicted and has been directed to suffer R.I. for a period of 10 years and to pay a fine of Rs.50,000/-, in default to suffer further imprisonment for the offence punishable under Chapter 12 of Cr.P.C. Yet again in the present case Abdul Karim Telgi is a co-accused along with the applicants.

2. The application was opposed by the present applicants. After hearing the parties, the application moved by the prosecution under section 324 of Cr.P.C. is allowed. Perusal of section 324 of Cr.P.C. reveals that a person having been convicted of an offence punishable under Chapter XII or Chapter XVII of IPC with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters, with imprisonment for a term of three years or upwards, and the Magistrate before whom the case is pending is satisfied that there is ground for presuming that such

person has committed the offence. he shall be sent for trial to the Chief Judicial Magistrate or committed to the Court of Session, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

3. In the present case Abdul Karim Telgi has already been convicted of offence punishable under Chapter XII and is sentenced to imprisonment for 10 years. He is yet again an accused in the present case, and one of the offence is under section 420 of IPC, which is punishable upto a term of seven years. Thus the material ingredients required to be established for committal of a case to the Court of Sessions stands satisfied. Sub section (2) postulates that if any person is sent for trial to Chief Judicial Magistrate or committed to the Court of Sessions under sub section (1) any other person/accused jointly with him in the same enquiry or trial shall be similarly sent or committed unless the Magistrate discharges the person or such other person under section 239 or 245 as the case may be. The present applicants are the co-accused along with Abdul Karim Telgi and thus the case of the present applicant is squarely covered by sub section (2).

4. The learned counsel for the applicant has contended that the impugned order passed by the Magistrate does not record the satisfaction that there is ground for presuming that such person has committed the offences and non recording of the satisfaction by itself, in the submission of the learned counsel, would vitiate the order.

5. Per contra the learned Special P.P. has submitted that non recording of the satisfaction cannot vitiate the order as in his submission the satisfaction has to be only subjective which need to be based on an objective date. Perusal of the application filed by the prosecution under section 324 of Cr.P.C. further reveals that the accused Abdul Karim Telgi is a Z+ security prisoner. His escort involves huge expenses. Hence the arrangement has been made at Sessions Court for Greater Mumbai at Mumbai for his trial by video conferencing. Having regard to the totality of the facts and materials on record the impugned order passed by the trial court cannot be faulted.

6. Perused the impugned order. The same does not call for any interference in exercise of jurisdction under section 482 of Cr.P.C. In the result, the application is summarily rejected.

. . . .